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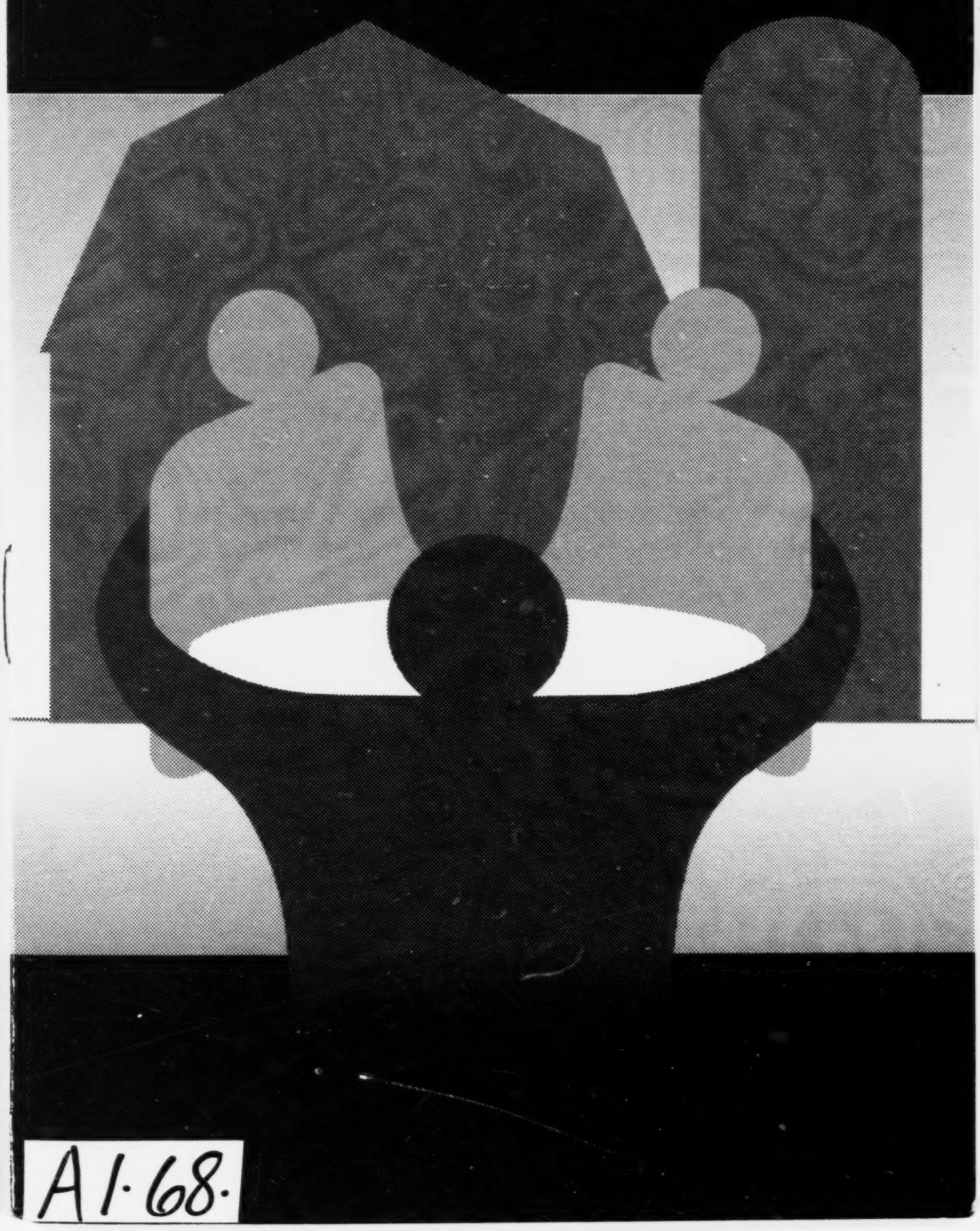
United States Department of Agriculture

Farmers Home Administration

Program Aid Number 1455

FmHA Farmer-Creditor Mediation

A Guide For Use in States **With** Certified Agricultural Mediation Programs



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FmHA Farmer-Creditor Mediation in Certified States

The Farmers Home Administration (FmHA) is authorized by the Agricultural Credit Act of 1987 to support and participate in farmer-creditor mediation programs in efforts to help keep economically stressed FmHA farm borrowers in business.

This pamphlet is intended as an informal guide to the mediation process for those borrowers and lenders in States with certified mediation programs.

FmHA programs are available to all eligible persons on an equal basis without regard to age, sex, race, color, religion, national origin, marital status, or handicap.

What Is Mediation?

Mediation is a process in which a trained, impartial person, a mediator, helps farmers and creditors look at their mutual problem, identify and consider options, and determine if they can agree on a solution. A mediator has no decision-making authority. Unlike a judge or an arbitrator, a mediator cannot decide what is right or "make" anyone do anything. Successful mediation is almost always based on the voluntary cooperation and participation of all the parties.

Unlike a court case, mediation is private, confidential, and informal. The farmer and the creditors (the parties), with the help of the mediator, can decide where, when, and how to meet. Usually, a mediator will help the parties prepare by suggesting information they should have to make the session most productive. A mediator will help the farmer and the creditor work together to evaluate that information and to understand the consequences if an agreement cannot be reached.

Because mediation is a flexible process, it can handle relatively small cases or large, complex ones quickly, efficiently, and inexpensively. More important, because farmers and creditors sit down together to discuss their problems, they begin to reestablish the trust that will be

needed if they are going to continue working together. In larger or more complicated cases, several meetings may be needed. In simpler cases, the issues may be resolved in a single day.

Where an agreement is reached, a mediator helps the parties translate that accord into a written document spelling out who will do what and what will happen next. This agreement provides a binding legal basis to resolve the credit dispute. Many farmer-creditor mediations result in negotiated agreements in which the farmer is able to remain in agriculture. In cases where the farmer cannot continue, mediation helps both the farmer and the creditor arrange an orderly exit.

FmHA Objectives in Mediation

FmHA enters mediation with three primary goals:

- To explore all the options to help keep the family farmer in agriculture.

- To work with the farmer and other creditors to develop a joint plan, if possible, that will benefit both the farmer and the creditors.

- To make the process of debt reorganization more efficient by reaching an agreement sooner, thereby reducing the number and length of reviews and appeals.

In mediation, FmHA representatives will try to set a positive, constructive tone, encouraging others to do the same. After mediation, FmHA hopes to continue its relationship with the farmer and the farm family.

The Mediation Process

Mediation can be requested by a farmer at any time, but usually occurs after FmHA advises the farmer of loan delinquency and informs the farmer of the opportunity to request mediation services.

The timetable in these cases is set by law. Once FmHA has notified a borrower that payments are delinquent, the borrower has 45 days to respond, requesting debt restructuring and presenting a plan. FmHA then has 60 days to analyze the plan and notify the farmer if debt restructuring or write-downs are applicable. If the rearrangements proposed will do the job, FmHA will usually agree to that plan with the farmer and no mediation is used.

FmHA favors the use of mediation when financial analysis (by FmHA DLR$ program based on the farm and home plan drawn up by the farmer) indicates that FmHA consolidation, rescheduling, reamortization, deferrals, and write-downs alone cannot resolve the credit problem. In these cases, the participation of non-FmHA lenders may be crucial to the successful development of a workable arrangement that keeps the farmer in business.

How Do State Agricultural Mediation Systems Work?

By legislative or executive action, a State agency develops a mediation program to help farmers and creditors. In most States, this operation is under the responsibility of the agriculture department or the office of the attorney general. In a few States, a private mediation organization may provide these services under contract. If a system meets the standards set by the Agricultural Credit Act of 1987, it is eligible for certification by FmHA and may receive limited Federal financial support.

Laws governing mediation vary from State to State. In most States, creditors notify a farmer that mediation services exist before the creditors take formal legal action to foreclose on a loan. The farmer usually has a limited period of time to request mediation or waive the opportunity to use the service.

If the farmer requests mediation, the mediation service contacts the farmer to get a complete list of creditors and suggests financial analysis or other steps the farmer should take to prepare for mediation. The mediation service then assigns one or more mediators to the case.

In some States, farmers and creditors may select or eliminate mediators offered. Once a mediator or mediator team is selected, all known creditors are advised that a mediation process is being started. If a meeting is scheduled, the parties are then informed of the time, place, and nature of the mediation process. Grounds rules are set to ensure that the conference is productive.

Once the parties are assembled, the mediator confirms that all agree to a few simple ground rules. Each tells his or her story to ensure that all points of view are covered.

The mediator then helps the parties identify information that might be needed to evaluate the situation, sources of expertise, and steps to be taken. Options are developed and recorded so each can be considered. Finally, a narrowing down of the options begins.

Preliminary agreements are reached about which possibilities might work and which should not be discussed further. The farmer and the creditors might want to talk with others. Caucuses might be called. Finally, the mediator helps the parties put all of their agreements together.

Once an agreement is reached, the mediator makes sure that it is in writing, signed, and made available to all participants. If an agreement is not reached, the case is closed, all parties are advised of the outcome, and all remain free to pursue other legal courses.

Rights and Responsibilities

Farmers and creditors using mediation will find the process fair to both sides. Mediation does not produce miracles and cannot be used to force either farmers or creditors to see things differently. Mediation does not favor one side or the other, but helps both consider their situation reasonably.

A farmer should:

- Gather all relevant financial records about the farming operation. FmHA county office staff will help farmers put that information into a standard plan describing how the farming operation might work in the future.

- Make a list of all creditors who should be involved in the mediation and all obligations that should be considered. By bringing all the creditors together at once, mediation can help to ensure that all the pertinent information and points of view will be considered at the same time. That can save a lot of time and effort compared with working things out with creditors one by one.

- Consider what is most important to the farmer and the family. What options are there? What are the alternatives if an agreement cannot be worked out? What family members should come to the mediation session? Who should be consulted before a final agreement is made?

- Keep an open mind. Mediation is not a formal or frightening procedure, but it is important and should be taken seriously.

Creditors should:

- Help the farmer identify all known obligations and creditors. It will not help a major creditor to make a deal which falls apart because another major creditor was not participating.

- Clarify what bargaining authority the representative to the mediation session has. Can the credit representative agree to a settlement, or must the deal be approved by someone else?

- Assess the value of the assets on hand and consider various options and scenarios.

- Keep an open mind. An idea might develop which has not been considered. Mediation is not a formal procedure, but it can help resolve very difficult problems if everyone approaches it with a constructive attitude.

FmHA Certification of New State Mediation Systems

FmHA has a special procedure to help States develop farmer-creditor mediation services. Under Federal Regulation 7 CFR 1946, FmHA officials determine whether a State program meets the following requirements:

- No later than August 1 of each year, the Governor or designated State agency head notifies FmHA of a desire to be certified and to be eligible to receive matching Federal support funds for an agricultural mediation program.

- The program provides mediation services to agricultural producers and their creditors to help them reach mutually agreeable settlement of their credit disputes.

- The program is authorized or administered by an agency of the State government or by the Governor.

- The program provides training for mediators.

- The program provides that the mediation process be confidential.

- The program ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation services available.

If all the conditions are met, FmHA may then certify the program and provide matching funds for up to $500,000 or 50 percent (whichever is less) of the operating and administrative costs of the program. These funds may be used to pay the staff salaries, office expenses, supplies, training, travel, clerical support, and administrative costs necessary to provide mediation services.

Further information about development and certification of State mediation programs may be obtained from:

FmHA Farmer Mediation Programs
USDA, Room 5025 South Building
Washington, DC 20250
(202) 382-1471

Farmers Home Administration is an Equal Opportunity Lender. Complaints of discrimination should be sent to: Secretary of Agriculture, Washington, DC 20250

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Additional Sources of Information

Additional information on how mediation of farmer-creditor disputes works may be obtained from local FmHA offices or one of the mediation programs listed below:

Alabama Department of Agriculture
Mediation Program
P.O. Box 3336
Montgomery, AL 36193-0001
(205) 261-2860

Iowa Farmer Creditor Mediation Service
315 East 5th Street, Suite 4
Des Moines, IA 50309
(515) 244-8216

Minnesota Farm Mediation Program
405 Coffey Hall, University of Minnesota
St. Paul, MN 55108
(612) 625-9721

Montana Ag-Mediation Program
Ag/Livestock Building
Capitol Station
Helena, MT 59620
(800) 722-FARM or (406) 444-2402

Nebraska Department of Agriculture
Mediation Program
P.O. Box 94947
Lincoln, NE 68509
(402) 471-2341

South Dakota Agricultural Mediation Service
445 East Capitol
Pierre, SD 57501-3188
(605) 773-5841

Utah Department of Agriculture
350 North Redwood Road
Salt Lake City, UT 84116
(801) 538-7100

Wyoming Ag-Mediation Service
3rd Floor, East Wing
Herschler Building
Cheyenne, WY 82002
(307) 777-7284